

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSHUA ROBERT ROMINE,

Defendant-Appellant.

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UNPUBLISHED

May 13, 2008

No. 273618

Cheboygan Circuit Court

LC No. 05-003300-FH

Before: Fort Hood, P.J., and Talbot and Borrello, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of felonious driving, MCL 257.626c, and operating a vehicle while intoxicated (OWI), MCL 257.625(1)(a).<sup>1</sup> He was sentenced to two years probation for the felonious driving conviction with the first five months served in the county jail and 93 days in jail for the OWI conviction. Defendant appeals as of right, and we affirm.

Defendant attended a wedding reception in northern Michigan with a close friend. At the reception, both defendant and his friend drank sufficient alcohol to register blood alcohol levels above the legal limit. As defendant was driving the two home, his vehicle collided with another vehicle on an interstate highway. As a result of the accident, defendant's friend was thrown from the vehicle and sustained life-threatening injuries and permanent neural damage. Defendant testified at trial that his friend caused the accident when she grabbed and pulled the steering wheel hard to the right.

On appeal, defendant alleges that there was insufficient factual evidence to support the felonious driving conviction. Specifically, defendant argues that because the jury found him not

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<sup>1</sup> The charges of operating a vehicle while intoxicated (OWI) causing serious injury, MCL 257.625(5), felonious driving, MCL 257.626c, and possession of marijuana, MCL 333.7403(2)(d), were submitted to the jury. The jury convicted defendant of the lesser offense of operating a vehicle while intoxicated (OWI), MCL 257.625(1)(a) instead of the OWI causing serious injury offense, convicted defendant of felonious driving, and acquitted defendant of the marijuana possession charge, although toxicology reports indicated that marijuana was present in defendant's system.

guilty of OWI causing serious injury, it must have concluded that his friend had grabbed the steering wheel. Thus, defendant argues that there was insufficient evidence to support defendant's felonious driving conviction because his friend's grabbing and pulling on the steering wheel was the cause of the crash, not defendant's driving. In determining whether there was sufficient evidence to support a conviction, the Court reviews the evidence de novo, in the light most favorable to the prosecution, and decides whether any rational fact-finder could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

A person is guilty of felonious driving if he operates:

a vehicle upon a highway . . . carelessly and heedlessly in willful and wanton disregard of the rights or safety of others, or without due caution and circumspection and at a speed or in a manner that endangers or is likely to endanger any person or property resulting in a serious impairment of a body function of a person, but does not cause death . . . . [MCL 257.626c.]

There is no dispute that defendant was operating his motor vehicle at the time of the crash. There is also no dispute that his friend was seriously injured in a manner that caused permanent impairment. At issue is whether defendant was operating his vehicle "in willful and wanton disregard of the rights or safety of others, or without due caution and circumspection and at a speed or in a manner that endangers or is likely to endanger any person or property resulting in" his friend's injuries. MCL 257.626c. Looking at the evidence in the light most favorable to the prosecutor, *Johnson, supra*, we conclude that there clearly was.

First, there is clear evidence, undisputed by defendant, that he was intoxicated beyond the legal limit, at the time of the crash. The police toxicologist testified that defendant's blood alcohol level taken approximately three hours after the crash was .14. Therefore, he opined that the blood alcohol level would have been higher at the time of the crash. The toxicologist also testified that the active ingredient in marijuana was found in defendant's system, indicating that he had ingested marijuana within a zero to six-hour period. He testified that both alcohol and marijuana impact the central nervous system and impair perception, judgment, and decision-making. Defendant's intoxication was evident in his driving. Numerous witnesses testified that, before the crash occurred, defendant was driving at an excessive rate of speed and nearly clipped two vehicles as he passed them. One driver called 911 to report defendant's dangerous driving before the crash even occurred. Thus, the evidence established that defendant was driving carelessly in disregard of the safety of others.

In challenging the felonious driving conviction, defendant concludes that the jury accepted his testimony that his friend jerked the wheel while he was driving in order to acquit him of the higher offense of OUIL causing serious injury. Therefore, defendant asserts that there is also insufficient evidence to support the felonious driving conviction. This argument is without merit. Whenever a court instructs on lesser-included offenses, it creates the possibility that a jury will reach a compromise verdict. *People v Chamblis*, 395 Mich 408, 426; 236 NW2d 473 (1975), overruled in part on other grounds by *People v Cornell*, 466 Mich 335, 357; 646 NW2d 127 (2002). However, a verdict may not be upset by speculation or inquiry into the jury's decision making. *Chamblis, supra*. Rather, as an appellate court, it is our function to review the

jury verdict to determine if the evidence supports the conviction. *Id.* Juries are not held to any rules of logic and possess the capacity for leniency, and thus, may render verdicts through compromise or leniency. *People v Burgess*, 419 Mich 305, 310; 353 NW2d 444 (1984). Judges must render logical verdicts and are precluded from exercising a jury's capacity for lenity. *People v Hutchinson*, 224 Mich App 603, 605-606; 569 NW2d 858 (1997).

There was sufficient evidence to support the felonious driving conviction. Defendant was aware of his friend's belligerence and intoxication. He testified that she attempted to open the door of the vehicle as it traveled at a high rate of speed and she punched him as he was driving. Despite this knowledge of her condition, he did not exit the highway or pull over to the side of the highway until she calmed down. Rather, he continued to drive at a high rate of speed and passed other vehicles in an unsafe manner.<sup>2</sup> This evidence was sufficient to support the felonious driving conviction. MCL 257.626c.

Affirmed.

/s/ Karen M. Fort Hood

/s/ Michael J. Talbot

/s/ Stephen L. Borrello

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<sup>2</sup> If defendant had been traveling on a secondary road at a slow rate of speed, any "jerk" of the steering wheel by his friend would not have caused the severe injuries to his friend and the extensive property damage to the vehicle that defendant struck. Fortunately, although that vehicle overturned, the driver and passenger were not seriously injured.